1947. **File No.** Molasses II/47

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Legal **DEPARTMENT**

B **BRANCH**

D 1318 **Subject:—** Rules and notifications under the Bombay Molasses Act, 1947

P 12E

File No. Molasses II/47

Std. Sectt. Slip 24 B a.

456-B

C O N T E N T S.

Legal Department File No. Colaccos II/47.

Sr. No.	Compilation No.	Subject	Pages.
		Rules & Notifns. under the Bhay Colaccos Act, 1947.	
(1)	G. No. 9242 16/9/47.	Sec. 22 — Notifn. & Rules under	1-3. & 8-32.
(2)		Section No. 11(2) — Notifn. under	5.
(3)		Sec. 5 (2) — Notifn. under [illegible]	7.
(4)	G. No. 10279 10/11/47.	Sec. 10(1) — Notifn. under Sec. 12(1) — Notifn. under.	35-41.
(5)	G. No. 13554 31/12/47.	Sec. 20(a) — Notifn. under	43-47.

Pages 9-33 not typed

Madhav Mookedam.

14/5/56.

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Office of the D.L.R.

The revised draft rules in place of the R.D. draft rules at pages 19-45 ante are sent herewith.

2. R.D.Draft rule 2.a:- Clause (iii) of this rule as worded is likely to be construed that licenses for sale would be granted only when the sale of molasses takes place outside the Province of Bombay. That clause has therefore been omitted in the revised draft. If any information is required as to whether a person requires a license for the sale of molasses outside the Province of Bombay it can be obtained by making a provision to that effect in the application form. Revised rule 4 makes the necessary provision.

3. Revised rule 6 has been inserted to provide for granting of a license on the Collector being satisfied regarding the suitability of the applicant. similar rule namely rule 13 has been inserted in respect of transport permits. The form of license has been made a part of the rules, but it will be permissible to make any necessary changes in the form of the licence before it is granted.

4. R.D. draft rules 5, 8(2) and (3) have been omitted from the revised draft. Provisions contained in these rules for submitting returns, maintaining accounts and inspecting premises can more appropriately be made in the form of licence.

5. R.D. draft rule 7 defines wholesale and retail sale. As there is no provision in the Act or in the proposed rules prohibiting the sale of molasses in excess of the retail sale the utility of draft rule 7 is not understood. The rule has therefore been omitted in the revised draft.

6. R.D. draft rule 10:- There is no provision in the Act requiring that the molasses which can be purchased or sold under the Act should be of any standard quality as prescribed in this rule. The rule has therefore been omitted in the revised draft. The provision in the rule that the licensee should allow a Government officer to take samples of molasses for analysis by the licensee's chemist is not appropriate. In the revised rule 20 provision has been made requiring the licensee to allow samples of molasses to be taken free of cost by the Government chemist or the Chemical Analyser with the Government of Bombay for chemical analysis on the lines of a similar provision under the Bombay Abkari Act, 1878.

7. R.D. draft rule 11:- The provision made in this rule is not warranted by the provisions of the Act and it has therefore been omitted in the revised draft.

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8. Licence :- A new condition, namely, condition 3, has been inserted in the licence form requiring the licensee to use molasses only for particular purposes to be specified in the licence.

9. Condition 6 of R.D. draft licence :- This condition has been omitted in the revised draft in view of new condition 3 in the revised draft licence and revised rule 5.

10. Condition 8 of R.D. draft licence:- This condition prescribes that the licensee shall not transfer the licence except under a permit issued by a duly authorised officer. If further goes on to say that the licensee shall not sell molasses to any person who has not obtained a valid permit for its transport. The first part of the condition is not necessary in view of the provisions of section 5 of the Act subject to which the licence is granted. The second part of the condition is relegated to condition 4 in the revised draft.

Condition 8 has therefore been omitted in the revised draft.

11. Notifications:- Notifications I and II at P. 11 ante as formally amended are in order. In place of R.D. notifications III and V at pages 13-15 ante a revised draft notification is sent herewith. In place of R.D. draft notification IV at p. 13 revised draft notificatons are sent. Under these notifications Central Excise Officers are empowered to exercise certain functions under the Act. Since the Central Excise Officers are officers of the Central Government, it would be necessary to obtain the consent of the Central Government before they are entrusted with the functions as proposed. R.D. draft notification VIat p.20 ante as slightly amended is in order. revised draft notification in place of R.D. draft notification NoVII at p.17 is also sent herewith. Under section 5 of the Act it is necessary to authorise also the Collector to grant permits. The revised draft notification therefore includes the Collector. R.D. will no doubt issue a similar notification authorising the Collector to grant licenses for the sale and possession of molasses.

Sd/-

for Remembrancer of Legal Affairs.

U.R. to R.D., No. 9242 ,dated the 16th September 1947.

M.R.D.
14-5-56
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NOTIFICATION.

REVENUE DEPARTMENT.

Bombay Castle, 1947.

Bombay Molasses Act, 1947.

No. :- In exercise of the powers conferred by sub-section (2) of section 11, and sub-section(1) of section 13 of the Bombay Molasses Act, 1947 (Bom. XXX of 1947.), the Government of Bombay is pleased to empower Police and Abkari Officers not below the rank of Sub-Inspectors within their respective jurisdictions for the purposes of the said sub-sections.

By order of the Governor of Bombay,

Secretary to Government.

R.R.D.
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NOTIFICATION.

VII

REVENUE DEPARTMENT,

Bombay Castle, 1947.

Bombay Molasses Act, 1947.

No. .- In exercise of the powers conferred by sub-section (2) of section 5 of the Bombay Molasses Act, 1947(Bom.XXX of 1947), the Government of Bombay is pleased to authorise the collector and every Abkari Officer not below the rank of a Sub-Inspector within their respective jurisdictions, to grant permits for transport of molasses under the said sub-section(2).

By order of the Governor of Bombay,

Secretary to Government.

M.R.D.
14-5-56
C.4

Revenue Department,

Bombay Castle, August 1947.

No. ,- In exercise of the powers conferred by sub-sectio (1) of section 10 of the Bombay Molasses Act, 1947 (Bom.XXX of 1947), the Government of Bombay is pleased to specially empower the following officers, within their respective jurisdictions for the purposes of the said sub-section, namely:-

1. A police officer not below the rank of a Sub-Inspector;
2. An Abkari Officer not below the rank of a Sub-Inspector;
3. A Central Excise Officer not below the rank of a Range Officer.

By order of the Governor of Bombay,

Secretary to Government.

N.R.D.
14-5-56
C.4

Revenue Department,

Bombay Castle, August 1947.

No. .- In exercise of the powers conferred by sub-section(1) of section 12 of the Bombay Molasses Act, 1947(Bom. XXX of 1947), the Government of Bombay is pleased to empower the following officers, within their respective jurisdictions for the purposes of the said sub-section, namely:-

1. A police officer not below the rank of a Sub-Inspector;
2. An Abkari Officer not below the rank of a Sub-Inspector;
3. A Central Excise Officer not below the rank of a Range Officer.

By order of the Governor of Bombay,

Secretary to Government.

H.R.D. -
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Office of the R.L.A.

Para. 4 (a) of R.D. note at page 106 ante and para. 3(1) of Commissioner's note at pages 91-92 ante.- Rules 2, 6 and 13 may be amended as shown on pages 55, 59 and 63 ante. The word 'transport' is not necessary.

2. Para. 5 of R.D. note at page 107 and para. 3 of Commissioner's note at page 92-93 ante.- (i) The Note suggested by the Commissioner may lead to complications. For example according to his Note it would be necessary to delete reference to sale even in condition 10 of the draft licence. Instead R.D. is requested to make a note in the margin, similar to that against condition 8 on p. 69 ante, pointing out the portion to be deleted when a licence is sought to be granted under rule 3(2). This is also the usual device resorted to in such cases.

(ii) Instead of amending condition 3 as pointed out by the Commissioner at p. 93 ante, it would be better if the condition is retained as it is on p. p.67 ante. The licensing authority can fill in the purposes having regard to the nature of the licence proposed to be granted.

(iii) There is no objection to entering the details in each part of the permit as suggested by the Commissioner at p. 94 ante.

3. Para. 6 of R.D. note on P. 107 and para. 4 of Commissioner's note at p.94 ante.- It is clear from the provisions of sub-section (2) of section 5 of the Act that unless general or special order of the Provincial Government is issued thereunder Collectors would not be competent to grant licences for the sale or possession of molasses. The draft notification on p. 97 ante in this behalf forwarded by the Commissioner, as amended, is in order.

4. Para. 8 of R.D. note at p. 108 .- The draft notification at pages 61-63 ante, as slightly amended, is in order.

5. As regards 'A' of R.D. note at p. 109 that Department is requested to state what legal complications it has in view.

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for Secretary of Legal Affairs.

H.R.D.-
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U.R. to R.D., No. 12779, dated the 20th November 1947.

Office of the R.L.A.

The first proposal of the Commissioner of Excise, approved by Government, is to split up the model form of licence for the possession and /or sale of molasses into three forms styled as M-I, M-II, and M-III. Licence Form M-II is for the possession and sale of molasses (Restricted to sales outside the Province of Bombay). Sub-section (1) of section 5 of the Bombay Molasses Act, 1947, provides that no person shall transport sell, or have in his possession any quantity of molasses. Sub-section (2) provides for the issue of licences and permits for the sale or possession and transport of molasses respectively. Sub-section(3) of the said section however provides that nothing in this Act shall affect the right of any person to possess, transport or sell molasses, if such possession, transport or sale is incidental to its import into or export from the Province of Bombay. "Incidental to " means necessary to, necessarily appertaining to or depending upon another which is termed the principal. A sale with a view to export, i.e. ~~primarily for the purpose~~ primarily for the purposes of export would be incidental to export. Such sale, possession or transport are taken out of the purview of the act. Whatever be the intention, that is the plain meaning, and I do not think that a person can be asked to take out a licence for the sale of molasses to a person outside the Province of Bombay. The licence Form M-II is in this view ultra vires of section 5 and has not been scrutinised.

2. The second proposal is to fix a high rate of fee and also a graded fee in respect of some licenced as proposed by the Commissioner in para. 5 of ~~the~~ his letter at pages 233-238 ante. Instead of a nominal fee of rupee one it is now proposed to fix-

(i) a fee of Rs. 100 in the case of licence M-I when the total quantity allowed to be possessed does not exceed 1000 maunds;

(ii) A fixed fee of Rs. 50 in the case of licence M-III.

In addition it is proposed to charge a graded fee in the case of licence M-I if the quantity to the possessed exceeds 1000 maunds.

3. R.D. should consider whether the licence fees as proposed are reasonable in amount having regard to the cost of issuing the licenses or some similar consideration. If they are not it will not be possible to justify their levy. The proposal of charging a graded fee amounts to levying an excise duty on the goods and is therefore ultra vires

therefore ultra vires of the Act.

4. Subject to the following observations licence forms I-I and ,-III and the form of permit as amended are in order.

(i) Licence Form M-I.- Condition 3.- Since a sale incidental to its export from the Province of Bombay is not affected by the Act and therefore no licence in form M,-II can be prescribed there is no propriety in ~~distinguishing~~ distinguishing a sale within the Province and outside the Province. Condition 3 has been amended accordingly.

(ii) Condition 4.- This condition has been amended so as to make the meaning clear.

(iii) Condition 5 and 7 - Government should consider whether the words " received" in condition 5 and "purchased" in condition 7 are to be retained in view of the fact that it is now proposed to issue a notification under section 20 (e) that licences for the possession and sale shall be granted to persons who are producers of molasses.

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If this amendment is agreed to consequential changes in Form II appended to the license form may be made.

(iv) Forms I and II (Form of Accounts etc.)- Since the word "used" has been deleted by the Commissioner from condition 7, consequential changes in column 2 of Form I and in column 5 of Form II have been made.

(v) Minimum Form No. I-III- Condition 1 - The maximum quantity of molasses which a licensee may possess has been regulated by rule 5 of of the Bombay Molasses Rules, 1947 ; and in the case of molasses used for domestic or industrial purposes has to be fixed on the monthly basis and that for distillation purposes on the annual basis. The condition has been amended accordingly.

5. Subsection (2) of N.D.'s Note - Section 20 does not impose an obligation that the order to be made thereunder should be published in the Official Gazette. There is, however, no objection to publishing such order in the Official Gazette for general information. A requisite draft order is sent herewith. N.D. should verify whether it carries out its intention.

6. The Revenue Department should consider whether the Bombay Molasses Rules, 1947, require any any amendments in view of what is stated in para. 1 above.

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Remembrancer of Legal Affairs.

N.D.
14-3-56
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U.O. to N.D. No. 1955 dated the 31st December 1947.

O R D E R.

Revenue Department

Bombay Castle, December 1947.

No. :- In exercise of the powers conferred by clause(e) of section 20 of the Bombay Molasses Act, 1947(Bom. XXX of 1947), the Government of Bombay is pleased to direct that licenses for sale of molasses shall be granted only to persons who are producers of molasses as a by-product in the process of manufacture of sugar or gur from sugar-cane in a sugar or gur factory.

By Order of the Governor of Bombay,

Secretary to Government.

M.R.D.
14-5-56
C.4